



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 13-01115  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: Bradley Moss, Esq.

04/04/2014

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. His request for a security clearance is denied.

**Statement of the Case**

On November 19, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline F (financial considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry (February 20, 1960)*, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program (January 2, 1992)* as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In his Answer to the SOR, Applicant admitted both allegations under Guideline F. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 4, 2014, setting the hearing date for February 26, 2014. At the hearing, I admitted into evidence four Government exhibits (GE 1-4). Applicant testified, offered the testimony of three witnesses, and presented nine exhibits, admitted into evidence as AE A-I. I marked Applicant's exhibit list as Hearing Exhibit (HE) I. I granted Applicant's request to hold the record open for additional documentation. He timely submitted three

exhibits, which I admitted as AE J-L. I marked Applicant's cover email as HE II. DOHA received the transcript of the hearing (Tr.) on March 7, 2014.

### **Findings of Fact**

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings and the evidence, I make the following additional findings of fact.

Applicant is 50 years old and single. He served in the U.S. Navy in the 1980s. He holds a bachelor's degree in finance, and has taken graduate courses in computer technology. He has worked 25 years as either a federal government employee or a federal contractor. He has held clearances intermittently since the early 1980s, without incident. Applicant began his current employment as a management consultant for a defense contractor in October 2012. His original annual salary was \$110,000. However, a mandatory employee pay cut in 2014 resulted in his salary being reduced to \$72,000. (GE 1, 2; Tr. 63-66, 114)

In 2001, Applicant was laid off and out of work for six to eight months. He was also unemployed for two months in 2008. Applicant supported himself on savings, and did not did not accrue delinquencies during either of these periods. In his Answer, Applicant stated that before 2011, he had a "better than satisfactory credit history of repaying my financial obligations on time." In September 2011, Applicant was laid off from his job with a federal contractor. He was unemployed until he accepted his current position in October 2012. Applicant supported himself with savings, his retirement funds, and help from his family. He became delinquent on his mortgages, car loan, utilities, and taxes.<sup>1</sup> He informed his creditors that he had limited funds available to meet his obligations. (Answer; GE 1, 2; Tr. 73-74, 87-91, 110)

The SOR alleges Applicant has one delinquency related to a mortgage loan, and one delinquent credit card account. The two accounts total \$156,000. They appear in credit reports dated May and October 2013, and February 2014. (GE 3, 4; AE H)

Between 2001 and 2006, Applicant bought three properties, which together involved seven mortgage loans. During his unemployment in 2011 and 2012, Applicant became delinquent on the loans. In 2011, he met with a realty team and the team's attorney about his mortgage debts. Applicant bought the following properties.

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<sup>1</sup> Applicant filed his tax returns as required, but he could not afford to pay his federal taxes for tax years 2010 and 2011. He owes approximately \$17,000 and has been paying his debt through a payment plan of \$250 per month. His federal tax debt is not alleged in the SOR. Unalleged conduct can be considered for limited purposes including: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3. See, ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); ISCR Case No. 08-09232, (App. Bd. Sept. 9, 2010) at 3. (GE 2; Tr. 110-112, 146)

**Property 1. Short-sold.** In 2001, Applicant purchased a townhouse for \$335,000. He paid approximately five percent down, and financed the property through two loans. Both of the loans were adjustable-rate mortgage (ARM) loans. His total monthly payment was \$2,300. His gross annual income at the time was \$108,000. In 2009, his monthly payment was about to increase by \$600 per month, which would have been difficult for him to pay. He requested a modification, but he was told he had to let the mortgage become three months delinquent to qualify. After he was three months delinquent, he was granted a modification and the loan became a fixed interest loan. (GE 2; Tr. 70-73)

By March 2012, Applicant had obtained a third loan secured by the property. He contacted the three lenders to obtain approval of a short sale. The holder of the second mortgage loan initially would not approve a short sale, but eventually approved it. The property sold in October 2013 for \$365,000. Each of the three lenders received a portion of the sale proceeds. Applicant testified that he has no remaining debt on any of the three mortgage loans. (GE 2; AE J; Tr. 92-96)

**Property 2. Short-sold.**, Applicant testified he purchased an investment in property 2005 for \$530,000. His gross annual income at the time was \$160,000. He did not make a down payment. He financed it through two five-year ARM loans, intending to hold it a short time and sell it before the loans adjusted to a higher rate. In 2010, when the ARM loans adjusted upward, Applicant was unable to sell the property or refinance it because the real estate market had declined and the market value of his property dropped by approximately \$100,000. Over the seven years that Applicant owned the property, he had tenants for approximately six years. Although the rent was generally about \$200 to \$300 less than his mortgage payment, he was able to meet his mortgage payments before his layoff in 2011. In October 2011, Applicant requested a short sale, which the lenders approved. In March 2012, the property was sold through a short-sale. (Tr. 47, 78-82, 91-92, 140-141)

**Property 3. First mortgage current; second mortgage delinquent.** Applicant and other family members live in state A. Applicant's parents lived in state B, but were planning to relocate. In January 2006, in an attempt to provide a place for his parents to live near the family, Applicant purchased a property in state A for \$636,000. He financed the house with a four to five percent down payment, and two five-year ARM loans. The total monthly payment was \$2,542. He was earning \$170,000 annually. His mother sometimes resided in the house in state A. Applicant testified that his mother has contributed to the rent since about 2008, but she testified that she did not do so until he was laid off in 2011. (AE F; Tr. 47-61, 83-87, 96-100)

As of the date of his security clearance application in April 2013, Applicant lived in Property 1. At the hearing, he stated he is living in Property 3. He testified he did not have difficulty paying the mortgage on Property 3 after his 2011 lay off because his mother made most of the monthly payment. She now resides there "on a pretty regular basis." She contributes at least \$1,000 per month towards the mortgage, and a portion

of the utility bill. In about mid-2012, the ARM on the primary loan for Property 3 adjusted, and his payment increased. In February 2013, Applicant worked with a credit counseling service to assist him in replacing the ARM with a fixed rate loan. The lender granted Applicant a forbearance, and the loan was subsequently modified in November 2013. The primary mortgage loan is current. (GE 2; Tr. 83-87, 96-100, 138-139)

The second loan on Applicant's residence is delinquent (allegation 1.b). Applicant's credit reports show when it was charged off by the creditor, it had a balance of \$131,624, with \$3,800 past due. Applicant testified that when the interest rate adjusted at about the same time as the first loan, he was unable to afford the \$300 increase because he was not employed. The loan became delinquent in January 2012. He testified he has not made payments on the loan for approximately one-and-one-half years because his realtor advised him to bring the primary mortgage loan current first. In late 2011 or early 2012, while he was unemployed, he provided the second lender with his financial information, and requested a reduced payment, but without success. When he obtained a job in October 2012, he requested a loan modification. As of the hearing date, he was still awaiting a response. He has also made a settlement offer of \$5,000. Even if the lender agrees to a modification, Applicant expects it to be difficult for him to make the payments. He testified that, at the time he bought his properties, he knew that when the ARM loans increased, he would have difficulty meeting the payments. (Answer; GE 2-4; AE H; Tr. 101-104, 124, 134-139, 152-155)

The SOR also alleges a credit card account with a delinquent balance of \$24,864 (allegation 1.a). In late 2011 or early 2012, while he was unemployed, Applicant requested a reduced payment plan, but the creditor would not agree. The account became delinquent in February 2012. After Applicant obtained employment in October 2012, he requested a monthly payment plan, but the creditor did not offer a plan that Applicant could afford. Toward the end of 2013, he offered the creditor a settlement amount of \$3,000 but he was referred to a collection agency. About one week before the hearing, Applicant offered the current collection agency the same settlement amount. The creditor refused and requested a lump-sum payment of approximately \$19,000, which Applicant could not afford. The debt is unresolved. (Answer; GE 2, 3; AE H; Tr. 104-110, 124-128)

At the time Applicant completed his October 2013 personal financial statement (PFS), he was earning \$110,000. His net monthly income, including \$500 rent from his mother, was \$6,168. He also had approximately \$16,000 in a retirement account. His monthly expenses totaled \$1,901, including payments on his primary mortgage, a car loan (\$721 per month), his IRS tax debt, and three credit cards. His debt payments totaled \$3,807. His monthly net remainder (MNR) was \$460. He was not making payments on the SOR debts listed at allegations 1.a and 1.b. (GE 2; AE F; Tr. 130)

Applicant completed an updated PFS in January 2014 showing a net worth of negative \$197,450. In February 2014, his company made budget cuts and his salary was reduced to \$72,000, or \$6,000 monthly. His net monthly pay is \$3,926. Based on

his October 2013 expenses and debt payments of \$5,708, his monthly remainder would be negative \$1,782. However, he submitted an updated balance sheet in March 2014 that showed an MNR of negative \$753. His February 2014 credit report shows a credit score of 599, which is described as "poor." (AE F, G, H, K, L; Tr. 114, 120-121, 145)

In January 2014, Applicant sought assistance from a financial counseling service. The company suggested a plan that would require Applicant to pay the company \$746 monthly to resolve his credit card account (allegation 1.a). The counselor determined Applicant could not afford the plan. The counselor advised him on ways to cut expenses, and Applicant has implemented some of the cost-cutting measures. (AE I; Tr. 130-134, 155-158)

Applicant's two brothers provided letters of recommendation. They describe him as reliable, responsible with his money, and family-oriented. One brother noted that Applicant "got caught up in the real estate fervor and has learned a vital lesson from this entire experience." The other brother stated, "I have seen him act responsibly with his finances my entire life and these recent events did not change my view of him on that." Applicant's friend of 34 years, who was unaware of the extent of Applicant's indebtedness, stated Applicant lives within his means. Two coworkers, who have known Applicant from five to ten years, did not have personal knowledge of his significant financial problems. They described him as adaptable, professional, and disciplined. (AE A-E; Tr. 15-60)

Applicant's friend of 40 years testified that he did not know details of Applicant's financial situation, but stated Applicant was "[t]rying to get real involved in real estate and then the market collapsed." He testified that Applicant tried to work out arrangements with creditors, and is "[n]ot the kind of person that would just let debt hang out there." (Tr. 15-23)

The managing partner and facility security officer (FSO) of Applicant's company testified that she has daily contact with Applicant. She noted that he disclosed his financial problems on his security clearance application, and he has had no security violations. She cited his excellent job performance, his professionalism, and his candor in disclosing his financial issues. (Tr. 22-41)

Applicant's mother is a retired federal employee and is now employed as a contractor with a federal agency. She testified that before Applicant was laid off in 2011, he did not have financial problems. After his layoff, he applied for jobs regularly. She assisted him financially when he was unable to meet his obligations. She knew two of his properties lost significant value and he was "[q]uite indebted with those two properties." She has provided funds twice to help Applicant with bills, and contributes approximately \$1,000 monthly for the mortgage. (Tr. 43-63)

## Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>2</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest<sup>3</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>4</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.<sup>5</sup>

## Analysis

### Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to financial considerations:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

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<sup>2</sup> Directive. 6.3.

<sup>3</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>5</sup> See *Egan*; AG ¶ 2(b).

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant's mortgage and credit card accounts represent a delinquent debt load of \$156,488. He had difficulty meeting his payments on three properties, including two he purchased during the real estate boom. He short-sold two properties, but he has been delinquent since January 2012 on the second loan on his residence. The credit card loan became delinquent in February 2012. He is unable to resolve the debts at this time. The following disqualifying conditions under AG ¶19 apply:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The Financial Considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent, because his mortgage loan and credit account debts are currently delinquent. Financial problems may recur in light of his unstable financial status: his pay has been reduced significantly, and he has a substantial negative MNR. However, because Applicant has made efforts to deal with his delinquencies, and his situation does not indicate a current lack of trustworthiness, he receives some mitigation under AG ¶ 20(a).

Some elements of Applicant's financial history resulted from events beyond his control, including the real estate market crash, his layoff in 2011, and a recent pay cut. Applicant made efforts by working with the lenders, and ultimately sold two properties for less than the mortgage balance owed. However, a key element in the evaluation is that Applicant initiated his financial problems by his own actions. He consciously decided to purchase two properties during the real estate boom, taking on debt of more than \$1,000,000. He placed a small down payment on one property and no down payment on the other. He financed both through ARMs. At one point, he had a total of seven ARMs on three properties. Most significantly, he knew when he made these loans that he would be unable to make the payments when the interest rates increased. Only limited mitigation is available to Applicant under AG ¶ 20(b).

Applicant sought professional advice on his financial situation from realtors, and more recently, from a financial counseling company. However, the financial counseling company informed him he could not afford a payment plan, even though it related to only one of his delinquencies. Two large debts remain unresolved. With a substantial negative monthly remainder, there appears little likelihood he will be able to bring his delinquencies under control in the near future. Applicant receives some mitigation under AG ¶ 20(c) and (d), but on balance, the partial mitigation available under Guideline F is insufficient to outweigh the significant debt that Applicant voluntarily assumed and is unlikely to be able to resolve in the foreseeable future.

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.



In assessing Applicant's request for security clearance eligibility, I considered the positive evidence under the whole-person concept. He is an educated man who has held responsible positions with the federal government, either as an employee or a contractor, for 25 years. He had solid credit before the housing market crash and unemployment affected his finances. He has resolved several debts.

However, the evidence against approval of Applicant's clearance is more substantial. The mortgage debts that he took on interfered with his ability to pay his other debts, including his federal taxes. Applicant has not made payments on his significant second mortgage loan for approximately one-and-one half years. He is in touch with the lender, but there is no evidence of a solution. Although he has contacted the collection agency that holds his credit card account, he has no plan in place to resolve that debt of almost \$25,000. The prospect for resolving his debts is poor, given his substantial negative monthly remainder. An applicant is not required to have resolved every debt. However, not only must he have a plan in place to deal with his debts, but he must show significant steps have taken place to implement that plan.<sup>6</sup>

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance.<sup>7</sup> The evidence at this time fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude he has not mitigated the security concerns raised by the financial considerations guideline.

### **Formal Findings**

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 1.b	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge

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<sup>6</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

<sup>7</sup> See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990)